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Supreme Court, U.S.
FILED
FEB 27 2017
OFFICE OF THE CLERK

No. 16-399

IN THE
Supreme Court of the United States

ANTHONY W. PERRY,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

JOINT APPENDIX

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February 27, 2017

PETITION FOR WRIT OF CERTIORARI FILED
SEPTEMBER 27, 2016
CERTIORARI GRANTED JANUARY 13, 2017

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United States Court of Appeals for
District of Columbia Circuit

Court of Appeals Docket #: 14-1155
Anthony Perry v. MSPB
Appeal From: Merits Systems Protection Board
Fee Status: Fee Paid

Docketed: 08/20/2014
Termed: 07/22/2016

Case Type Information:
1) Petition for Review
2) Review
3)

Originating Court Information:
District: MSPB-1 : MSPB-DC-0752-12-0486-B-1

District: MSPB-1 : MSPB-DC-0752-12-0487-B-1

Prior Cases:
None

Current Cases:
None

Panel Assignment:
Panel: TBG SS PAM
Date of Hearing: 11/18/2015 **Date of Decision:** 07/22/2016 **Date Completed:** 07/22/2016

Anthony W. Perry	Petitioner	Anthony W. Perry [NTC Pro Se] Firm: 301-928-2305 5907 Croom Station Road Upper Marlboro, MD 20772
v.		

Merit Systems Protection Board Respondent	Stephen William Fung Direct: 202-254-4483 Email: stephen.fung@mspb.gov [COR NTC Gvt US Agency] Merits Systems Protection Board Firm: 202-653-6772 1615 M Street, NW Washington, DC 20419-0002

Rebecca Liane Taibleson Appointed Amicus Curiae for Petitioner	Devin Scott Anderson Direct: 202-879-5198 Email: devin.anderson@kirkland.com [NTC Appointed Amicus] Kirkland & Ellis LLP Firm: 202-879-5000 655 15th Street, NW Suite 1200 Washington, DC 20005 Christopher Landau Direct: 202-879-5087 Email: clandau@kirkland.com [COR NTC Appointed Amicus] Kirkland & Ellis LLP Firm: 202-879-5000 655 15th Street, NW Suite 1200 Washington, DC 20005

Anthony W. Perry, Petitioner v. Merit Systems Protection Board, Respondent --- Rebecca Liane Taibleson, Appointed Amicus Curiae for Petitioner

08/20/2014	☒	PETITION FOR REVIEW CASE docketed. [14-1155]
08/21/2014	☒ ▩ 87 pg, 5.44 MB	PETITION FOR REVIEW filed [1508610] by Anthony W. Perry of a decision by federal agency [Service Date: 08/21/2014] Disclosure Statement: Not Applicable to this Party; Certificate of Parties: Not Applicable to this Filing. [14-1155]
08/21/2014	☒ ▩ 1 pg, 39.13 KB	CERTIFIED COPY [1508679] of Petition for Review sent to respondent [1508610-2] [14-1155]
08/21/2014	☒ ▩ 8 pg, 625.03 KB	CLERK'S ORDER filed [1508682] directing party

		to file payment of docketing fee PETITIONER payment of docketing fee due 09/22/2014; directing party to file motion to proceed on appeal in forma pauperis. PETITIONER motion to proceed IFP in this court due 09/22/2014; to show cause regarding petition for review [1508610-2]. Response to Order due 09/22/2014. Response may not exceed 20 pages, Failure to respond shall result in dismissal of the case for lack of prosecution; The Clerk is directed to mail this order to petitioner by certified mail, return receipt requested and by 1st class mail. [14-1155]
08/21/2014	X	FIRST CLASS MAIL SENT [1508686] of order [1508682-2] to petitioner [14-1155]
08/21/2014	X	CERTIFIED MAIL SENT [1508688] with return receipt requested [Receipt No.70070710000047191853

		0] of order [1508682-2]. Certified Mail Receipt due 09/22/2014 from Anthony W. Perry. [14-1155]
08/29/2014	[X] 1 pg, 126.64 KB	CERTIFIED MAIL RECEIPT [1510238] RECEIVED from Anthony Perry [signed for on 08/28/2014] for order [1508688-2] sent to Petitioner Anthony W. Perry [14-1155]
09/18/2014	[X]	NOTICE FILED [1513578] by Anthony W. Perry for payment of docketing fee. [Case Number 14-1155: Fee Paid] [Service Date: 09/18/2014] [14-1155]
09/18/2014	[X] 13 pg, 409.63 KB	RESPONSE FILED [1513632] by Anthony W. Perry to order to show cause [1508682-2] combined with a MOTION FILED by Anthony W. Perry to vacate (Response to Motion served by mail due on 10/06/2014) [Service Date: 09/23/2014 by Clerk] Pages: 11-15. [14-1155]--[Edited 09/23/2014 by LMF]

10/02/2014	✕ 1 pg, 390.59 KB	ENTRY OF APPEARANCE filed [1515059] by Jeffrey Gauger and co-counsel Stephen Fung Bryan Polisuk on behalf of Respondent MSPB. [14-1155] (Gauger, Jeffrey)
10/02/2014	✕ 31 pg, 1.78 MB	REPLY FILED [1515146] by MSPB to Response and RESPONSE FILED to Cross Motion [1513632-3] (Reply to Response by Mail to Cross Motion due on 10/14/2014) [Service Date: 10/02/2014 by US Mail, CM/ECF NDA] Pages: 1-10. [14-1155] (Gauger, Jeffrey)
10/08/2014	✕ 53 pg, 7.86 MB	REPLY FILED [1516315] by Anthony W. Perry to response [1515146-2] styled as "Reply to Response to Petitioners Response to Order to Show Cause and Response to Petitioners Motions to Void Orders and Judgments". [Service Date: 10/09/2014 by CM/ECF NDA] Pages: 1-10. [14-1155]

12/05/2014	[X] 43 pg, 2.05 MB	SUPPLEMENT [1526466] to response [1513632-2] filed by Anthony W. Perry [Service Date: 12/05/2014] [14-1155]
12/18/2014	[X] 2 pg, 43.4 KB	PER CURIAM ORDER filed [1528135] discharging Clerk order of docketing fee payment [1508682-2], directing the parties, while not otherwise limited, address in their briefs (1) whether this court has jurisdiction to hear this case under 5 U.S.C. 7703(b)(1)(B); and (2) if not, whether this case should be transferred to the Federal Circuit or a district court pursuant to 5 U.S.C. § 7703(b)(1)(A) or (2); appointing amicus curiae Rebecca Liane Taibleson; referring motion to vacate [1513632-3] to the merits panel to which this case is assigned. Before Judges: Henderson, Srinivasan and Millett. [14-1155]
12/23/2014	[X] 3 pg, 87.17 KB	CLERK'S ORDER filed [1528905] setting briefing schedule: PETITIONER

		Brief due 02/13/2015. APPENDIX due 02/13/2015. AMICUS FOR PETITIONER Brief due 02/13/2015. RESPONDENT Brief due on 03/16/2015. PETITIONER Reply Brief due 03/30/2015. AMICUS FOR PETITIONER Reply Brief due 03/30/2015 [14-1155]
12/23/2014	☒	CERTIFIED MAIL SENT [1528914] with return receipt requested [Receipt No.7007 0710 0004 7195 9991] of briefing order [1528905-3]. Certified Mail Receipt due 01/22/2015 from Anthony W. Perry. [14-1155]
12/23/2014	☒	FIRST CLASS MAIL SENT [1528915] of briefing order [1528905-3] to petitioner [14-1155]
12/30/2014	☒ 1 pg, 95.68 KB	CERTIFIED MAIL RECEIPT [1531396] RECEIVED from Anthony Perry [signed for on 12/29/2014] for order [1528914-2] sent to Petitioner Anthony W. Perry [14-1155]

01/05/2015	[X] 1 pg, 36.43 KB	NOTICE FILED [1531387] by Anthony W. Perry to join in brief of amicus curiae [Service Date: 01/02/2015] [14-1155]
02/13/2015	[X] 61 pg, 317.06 KB	AMICUS FOR PETITIONER BRIEF [1537552] filed by Ms. Rebecca Liane Taibleson [Service Date: 02/13/2015] Length of Brief: 9,998 words. [14-1155] (Taibleson, Rebecca)
02/13/2015	[X] 596 pg, 33.6 MB	*JOINT* APPENDIX [1537564] filed by Ms. Rebecca Liane Taibleson and Anthony W. Perry. [Volumes: 1] [Service Date: 02/13/2015] [14-1155] (Taibleson, Rebecca)
02/19/2015	[X] 12 pg, 414.65 KB	CERTIFIED INDEX TO RECORD [1538388] filed by MSPB [Service Date: 02/19/2015] [14-1155] (Fung, Stephen)
03/16/2015	[X] 4 pg, 83.21 KB	UNOPPOSED MOTION filed [1542463] by MSPB for leave to file appendix [Service Date: 03/16/2015] Pages: 1-10. [14-1155] (Fung, Stephen)

03/16/2015	[X] 71 pg, 1.49 MB	MODIFIED EVENT FROM FILED TO LODGED--SUPPLEMENTAL APPENDIX [1542466] filed by MSPB. [Volumes: 1] [Service Date: 03/16/2015] [14-1155]--[Edited 03/18/2015 by LMF] (Fung, Stephen)
03/16/2015	[X] 58 pg, 559.96 KB	RESPONDENT BRIEF [1542614] filed by MSPB [Service Date: 03/16/2015] Length of Brief: 8700 words. [14-1155] (Fung, Stephen)
03/19/2015	[X] 1 pg, 38.15 KB	CLERK'S ORDER filed [1543230] granting motion for leave to file [1542463-2]; the Clerk is directed to file supplemental appendix [1542466-2] [14-1155]
03/19/2015	[X]	PER ABOVE ORDER lodged appendix [1542466-2] is filed [14-1155]
03/30/2015	[X] 37 pg, 217.08 KB	AMICUS FOR PETITIONER REPLY BRIEF [1544921] filed by Ms. Rebecca Liane Taibleson [Service Date: 03/30/2015] Length of

		Brief: 5,852 words. [14-1155] (Taibleson, Rebecca)
09/04/2015	[X] 1 pg, 41.17 KB	CLERK'S ORDER [1571543] filed scheduling oral argument on Wednesday, 11/18/2015. [14-1155]
10/08/2015	[X] 27 pg, 1.27 MB	PETITIONER BRIEF [1578991] filed by Anthony W. Perry [Service Date: 10/07/2015] [14-1155]
10/26/2015	[X]	FORM 72 [1579934] submitted by amicus for appellant [Service Date: 10/26/2015] [14-1155]--[Edited 10/26/2015 by LMF] (Taibleson, Rebecca)
10/27/2015	[X]	FORM 72 submitted by arguing attorney, Stephen W. Fung, on behalf of Respondent MSPB *(For Internal Use Only: Form is restricted to protect counsel's personal contact information).* [14-1155] (Fung, Stephen)
11/04/2015	[X] 1 pg, 41.79 KB	PER CURIAM ORDER [1581893] filed allocating oral argument time as follows: Appointed Amicus Curiae Petitioner - 10

		Minutes, Respondent - 10 Minutes. One counsel per side to argue; directing party to file Form 72 notice of arguing attorney by 11/12/2015 [14-1155]
11/05/2015	☒	FORM 72 submitted by arguing attorney, Stephen Fung, on behalf of Respondent MSPB *(For Internal Use Only: Form is restricted to protect counsel's personal contact information).* [14-1155] (Fung, Stephen)
11/05/2015	☒	FORM 72 submitted by arguing attorney, Rebecca Tiableson, on behalf of Appointed Amicus Curiae for Petitioner Ms. Rebecca Liane Taibleson *(For Internal Use Only: Form is restricted to protect counsel's personal contact information).* [14-1155] (Taibleson, Rebecca)
11/18/2015	☒ 1 pg, 39.78 KB	ORAL ARGUMENT HELD before Judges Griffith, Srinivasan and Millett. [14-1155]
12/11/2015	☒	TRANSCRIPT [1588205] of oral argument [14-1155]

03/30/2016	[X] 2 pg, 79.19 KB	NOTICE [1606371] filed by Ms. Rebecca Liane Taibleson to withdraw attorney Rebecca Liane Taibleson who represented Rebecca Liane Taibleson in 14-1155 [Service Date: 03/30/2016] [14-1155] (Taibleson, Rebecca)
07/22/2016	[X] 1 pg, 53.55 KB	PER CURIAM JUDGMENT [1626350] filed that the petition for review be transferred to the Federal Circuit, for the reasons in the accompanying opinion. The Clerk is directed to electronically transmit the original file and a certified copy of this judgment to the U.S. Court of Appeals for the Federal Circuit. Before Judges: Griffith, Srinivasan and Millett. [14-1155]
07/22/2016	[X] 14 pg, 64.67 KB	OPINION [1626356] filed (Pages: 14) for the Court by Judge Srinivasan. [14-1155]
07/22/2016	[X] 1140 pg, 57.57 MB	LETTER [1626364] sent to transfer case to the USCA Federal Circuit. Documents Sent: Clerk's

		File and copy of judgment transferring case. [14-1155]
07/25/2016	☒	NOTICE [1627505] filed by case received and given CAFC case No. 16-2377. [Service Date: 07/22/2016] [14-1155]
09/27/2016	☒ 1 pg, 53.33 KB	LETTER [1638483] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 09/27/2016 as No. 16-399. [14-1155]
01/13/2017	☒ 1 pg, 62.8 KB	LETTER [1656225] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 16-399: The petition for writ of certiorari was granted on 01/13/2017. [14-1155]

MSPB Dockets
ANTHONY W. PERRY v. DEPARTMENT OF COMMERCE
DC-0752-12-0487-B-1

Tab	Doc Info.	Submitted by	Date Issued/ Received
	Petition for Review		
19	Final Order	MSPB	8/6/2014
18	Certificate of Service	MSPB	8/6/2015
17	Letter Acknowledging Motion	MSPB	7/23/2014
16	Motion For Leave To File New Material and Relevant	Appellant	7/23/2014
15	Agency Representative Addition	Agency	5/9/2014
14	Response to Agency Opposition to PFR	Agency	3/1/2014
13	Opposition to Appellant's Petition for Review	Agency	2/21/2014
12	Petition For Review Acknowledgment Letter	MSPB	1/28/2014
11	Petition For Review With Redactions	Appellant	1/27/2014
10	Request Leave to Exceed Page Limit	Appellant	1/23/2014
9	Order Denying Request to Exceed PFR Page Limit	MSPB	1/23/2014
8	Response to Appellant's Request to Supplement the Record	Agency	1/22/2014
7	Request to Supplement the Record	Appellant	1/16/2014
6	Letter Rescinding Petition for Review	MSPB	1/8/2014
5	Intent Letter	Appellant	1/8/2014
4	Continuation of Response to PFR	Appellant	1/8/2014

3	Response to Petition for Review Dated December 26, 2013 dated 1/2/2014	Appellant	1/8/2014
2	Petition For Review Acknowledgment Letter	MSPB	1/7/2014
1	Petition for Review	Appellant	1/2/2014
	Initial Appeal		
3	Order and Summary of Prehearing Conference	MSPB	8/6/2013
2	Hearing Order	MSPB	6/19/2013
1	Board Ordered Remand	MSPB	6/12/2013
1	Acknowledgment Order	MSPB	6/19/2013

MSPB Dockets
ANTHONY W. PERRY v. DEPARTMENT OF COMMERCE
DC-0752-12-0487-I-1

Tab	Doc Info.	Submitted by	Date Issued/ Received
	Petition for Review		
8	Remand Order	MSPB	6/12/2013
7	Letter Rejecting Pleading	MSPB	3/5/2013
6	Ojection To Agency Motion To Strike Response	Appellant	10/15/2012
5	Motion to Strike Appellant's Reply to Agency's Response to Petition for Review	Agency	10/10/2012
4	Response to Agency Response to Petition for Review	Appellant	9/26/2012
3	Response to Petition for Review	Agency	9/20/2012
2	Petition For Review Acknowledgment Letter	MSPB	9/10/2012
1	Petition For Review	Appellant	9/6/2012
	Initial Appeal		
28	Initial Decision	MSPB	7/30/2012
27	Motion to Supplement the Close of Record Conference Summary	Appellant	7/3/2012
26	Summary of Status/Close of Record Conference	MSPB	6/26/2012
25	Response to Agency's 6/15 Opposition to Motions	Appellant	6/19/2012
24	Response to Motion	Agency	6/15/2012
23	Second Response to Agency Response File	Appellant	6/7/2012

22	Request to Compel May Discovery Request	Appellant	6/5/2012
21	Opposition to Removing Documents from File	Appellant	6/5/2012
20	Response to Hearing Clarification	Appellant	6/4/2012
19	Agency's Witness List	Agency	6/4/2012
18	Response to Agency File	Appellant	6/1/2012
17	Response to Close of Record Conference	Appellant	6/1/2012
16	Agency Response to Jurisdictional Order	Agency	5/29/2012
15	Agency Respnose File	Agency	5/21/2012
14	Response to Order on Jurisdication	Appellant	5/17/2012
13	Motion to Stay Filing of Agency Response and Discovery	Agency	5/11/2012
12	Removal Decision	Agency	5/10/2012
11	Letter of Proposed Removal	Agency	5/9/2012
10	Agency Representative Addition	Agency	5/9/2012
9	Correspondence RE: EEOC	Appellant	5/7/2012
8	Response to Specifications	Appellant	5/7/2012
7	Jurisdiction Order	MSPB	5/7/2012
6	Close of Record Conference	MSPB	5/7/2012
5	EEOC Document Re: Settlement Discussion	Appellant	5/3/2012
4	Waiver Rights to a Hearing	Appellant	5/3/2012
3	Acknowledgment Order	MSPB	4/30/2012
2	Supporting Documents	Appellant	4/27/2012
1	Initial Appeal	Appellant	4/25/2012

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14	Opposition to Appellant's Petition for Review	Agency	2/21/2014
13	Petition For Review Acknowledgment Letter	MSPB	1/28/2014
12	Petition For Review With Redactions	Appellant	1/27/2014
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8	Response to Appellant's Request to Supplement the Record	Agency	1/22/2014
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2	Petition For Review Acknowledgment Letter	MSPB	1/7/2016
1	Petition For Review	Appellant	1/2/2014
	Initial Appeal		
31	Petition for Review (Pacer Copy) filed on 8/20/2014	Petitioner	9/2/2014
30	Request	Appellant	12/30/2013
29	Certificate of Service	MSPB	12/23/2013
28	Initial Decision	MSPB	12/23/2013
27	Request For An Immediate Decision on the Merits	Appellant	11/26/2013
26	Hearing CD 8/07/13	Other	8/23/2013
25	Order and Summary of Prehearing Conference	MSPB	8/6/2013
24	Untimely Objection to Appellant Exhibits	Appellant	8/5/2013
23	Agency's Objections to Appellant's Proposed Exhibits	Agency	8/5/2013
22	Witness List Attachment Resubmission Due To Failure to Attach	Appellant	8/3/2013
21	Agency's Prehearing Submission	Agency	8/1/2013
20	List of Facts and Issues	Appellant	7/29/2013
19	Appellant Witness List	Appellant	7/23/2013
18	Response to Agency Opposition to Motion For SF-50 and SF-52	Appellant	7/23/2013
17	Opposition to Motion for Discovery of SF-50 and SF-52	Agency	7/22/2013

16	Motion To Compel the Agency to Respond To Pending Motions for Discovery	Appellant	7/15/2013
15	Motion To AJ For Document Titles and Reason Returned	Appellant	7/15/2013
14	Motion For Discovery of SF-50 and SF-52	Appellant	7/11/2013
13	Exhibits E and F	Appellant	7/8/2013
12	Objection To Agency Motion To Strike	Appellant	7/8/2013
11	Motion to Strike	Agency	7/5/2013
10	Clarification of Agency's Request	Appellant	7/3/2013
9	Supervisor Code, Work Performance and Responsibilities	Appellant	7/3/2013
8	Discovery of Deciding Official's Notes, Communications, Correspondence and	Appellant	7/3/2013
7	Objection To Agency's Motion to Conduct Discovery and to Extend Hearing Date	Appellant	7/1/2013
6	Motion to Conduct Discovery and Extend Hearing Date	Agency	6/27/2013
5	Motion to Conduct Discovery and to Extend Hearing Date by 7 Days	Agency	6/27/2013
4	John Does v. Dept. of Commerce/EEOC Guidance and Relevant Docs	Appellant	6/28/2013
3	Hearing Order	MSPB	6/19/2013
2	Acknowledgment Order	MSPB	6/19/2013

1	Board Ordered Remand	MSPB	6/12/2013

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5	Response To Agency Response to Petition For Review	Appellant	9/26/2012
4	Response to Petition for Review	Agency	9/20/2012
3	Response to Petition for Review Acknowledgment Order dated 9/7/2012	Appellant	9/9/2012
2	Petition For Review Acknowledgment Letter	MSPB	9/7/2012
1	Petition for Review	Appellant	9/6/2012
	Initial Appeal		
29	Motion to Stay Filing of Agency Response and Discovery	Appellant	5/11/2012

28	Initial Decision	MSPB	7/30/2012
	Certificate of Service	MSPB	7/30/2012
27	Motion to Supplement the close of Record Conference Summary	Appellant	7/3/2012
26	Summary of Status Conference	MSPB	6/26/2012
25	Response to Agency's 6/15 Opposition to Motions	Appellant	6/19/2012
24	Response to Motions	Agency	6/15/2012
23	Second Response to Agency Response File	Appellant	6/7/2012
22	Request to Compel May Discovery Request	Appellant	6/5/2012
21	Opposition to the Removal of Documents from File	Appellant	6/5/2012
20	Response to Hearing Clarification	Appellant	6/4/2012
19	Agency's Witness List	Agency	6/4/2012
18	Response to Agency's File	Appellant	6/1/2012
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12	Removal Decision	Agency	5/10/2012

11	Letter of Proposed Removal	Agency	5/9/2012
10	Agency Representative Addition	Agency	5/9/2012
9	Correspondence RE: EEOC	Appellant	5/7/2012
8	Response to Specifications	Appellant	5/7/2012
7	Jurisdiction Order	MSPB	5/7/2012
6	Close of Record Conference	MSPB	5/7/2012
5	EEOC Document Re: Settlement Discussion	Appellant	5/3/2012
4	Waiver Rights to a Hearing	Appellant	5/3/2012
3	Acknowledgment Order	MSPB	4/30/2012
2	Supporting Documents	Appellant	4/27/2012
1	Initial Appeal	Appellant	4/25/2012

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Anthony W. Perry,
Complainant,

v.

Gary Locke, Secretary,
U.S. Department of Commerce
Agency.

EEOC Case No. 531-2010-00351X
Agency Complaint Nos. 09-63-01027, 10-63-00197 & 11-63-00080

EEOC Docket No. 0120111784
Agency Complaint Nos. 07-63-00080 & 07-63-00145

EEOC Docket No. 0120111034
Agency Complaint No. 10-63-02671

SETTLEMENT AGREEMENT

1. **PARTIES.** The parties, Anthony W. Perry (Complainant) and the U.S. Department of Commerce (Agency), through the undersigned, voluntarily enter into this Settlement Agreement (Agreement), to resolve all existing matters concerning Complainant's employment with the Agency, including the issues raised in EEOC Case No. 531-2010-00351X / Agency Complaint Nos. 09-63-01027, 10-63-00197 & 11-63-00080 and any outstanding appeal rights stemming from EEOC Docket No. 0120111784 / Agency Complaint Nos. 07-63-00080 & 07-63-00145 and EEOC Docket No. 0120111034 / Agency Complaint No. 10-63-02671. By this Agreement, the parties resolve all disputes between them concerning Complainant's

employment with the Agency, regardless of the forum, in existence on the effective date of this Agreement.

2. COMPLAINANT. In consideration of the Agency taking the actions described in Paragraph 3 below, Complainant agrees to:

a. Retire voluntarily effective no later than September 4, 2012. Complainant acknowledges that by entering into this Agreement his decision to retire is both voluntary and irrevocable.

b. Voluntarily resign from his employment with the Agency, effective September 4, 2012, in the event Complainant has not retired by the close of business, September 4, 2012. Complainant will do this by completing Part E of the Standard Form 52 attached to this Agreement and submitting this completed form to the Agency at the same time that he submits this Agreement with his signature. Complainant agrees that the reason given for his resignation will not be adverse or hostile to the Agency.

c. Except as set forth in this Agreement, not apply for or accept any positions with the Agency at any time in the future from the effective date of this Agreement. If Complainant applies for employment in violation of the Agreement and the Agency hires him, the Agency, at its discretion, may remove him immediately. Complainant further agrees to voluntarily waive all appeal rights he has and not to litigate in any forum, judicial or administrative, any claims arising from a removal pursuant to this paragraph.

d. Refrain from engaging in any acts of misconduct from the effective date of this Agreement until his retirement or resignation, which will be no later than September 4, 2012. If the Agency determines in its sole discretion that Complainant has engaged in any acts of misconduct during the time period established in this paragraph, Complainant will be subject to immediate removal without any right to reply. The waiver of rights contained in Paragraph 2.h. below applies to any removal implemented pursuant to this paragraph.

e. Serve a suspension for thirty (30) calendar days in lieu of the removal proposed on June 7, 2011, for receipt of pay for time not worked and failure to follow supervisory directive. The suspension will be served nine (9) consecutive calendar days per pay period between Saturday of the preceding week and Sunday of the following week, beginning Saturday, August 27, 2011.

f. Accept, at the Agency's sole discretion, a reassignment from the effective date of this Agreement until his retirement or resignation, which will be no later than September 4, 2012. Complainant agrees and understands that he will be reassigned to the position of Information Technology Specialist, GS-14, with no supervisory title, status or duties. There will be no change to Complainant's salary and/or benefits as a result of this reassignment. The Agency retains the right to change Complainant's supervisor or work unit at its sole discretion.

g. **WITHDRAWAL.** Withdraw EEOC Case No. 531-2010-00351X / Agency Complaint Nos. 09-63-01027, 10-63-00197 & 11-63-00080, EEOC Docket No. 0120111784 / Agency Complaint Nos. 07-63-00080 & 07-63-00145, and EEOC. Docket No. 0120111034 / Agency Case No. 10-63-02671 with no right to raise these issues again, except as provided in Paragraph 7, below. These withdrawals will take effect on the effective date of this Agreement.

h. **WAIVER.** Waive, release, and forever discharge the Agency, its officers, agents, employees, and representatives (in their official and/or personal capacities) from any claims, demands, or causes of action, which Complainant has or may have, arising from his employment, including issues raised in EEOC Case No. 531-2010-00351X / Agency Complaint Nos. 09-63-01027, 10-63-00197 & 11-63-00080, EEOC Docket No. 0120111784 / Agency Nos. 07-63-00080 & 07-63-00145, and EEOC Docket No. 0120111034 / Agency Case No. 10-63-02671. Complainant specifically waives any and all rights and claims arising out of the issues raised in the above-cited formal complaints of discrimination and/or related to any action taken pursuant to any provision of Paragraph 2, above, and Paragraph 3, below. Complainant waives any and all rights and claims arising from Complainant's employment under the Age Discrimination in Employment Act, 29 U.S.C. § 633a *et seq.*, as amended by the Older Workers' Benefit Protection Act, the Rehabilitation Act, 29 U.S.C. § 791 *et seq.*, as amended, and/or Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, as

amended, as applicable. This release includes but is not limited to a release of any right to administrative, judicial, or congressional relief, or any other type of relief, or of any claim to back pay, attorneys' fees and costs, or other type of compensation, except what is specifically set forth in paragraph 3, below. However, by entering into this Agreement, Complainant does not waive rights or claims that may arise after the effective date of the Agreement.

3. AGENCY. In consideration of Complainant taking the actions described in Paragraph 2, above, the Agency agrees to:

a. Not remove Complainant from his position or from the Federal service based upon the charges outlined in the June 7, 2011, proposal to remove letter.

b. Issue a decision on the proposal to remove letter issued on June 7, 2011, suspending Complainant for thirty (30) days. The suspension will be served nine (9) consecutive calendar days per pay period between Saturday of the preceding week and Sunday of the following week, beginning Saturday, August 27, 2011. Complainant understands that the wording of the letter suspending him is within the sole and exclusive discretion of the Agency.

c. At the Agency's sole discretion, reassign Complainant from the effective date of this Agreement until his retirement or resignation, which will be no later than September 4, 2012. Complainant agrees and understands that he will be reassigned to the position of Information Technology Specialist, GS-14, with no

supervisory title, status or duties. There will be no change to Complainant's salary and/or benefits as a result of this reassignment. The Agency retains the right to change Complainant's supervisor or work unit at its sole discretion.

d. Process Complainant's voluntary resignation effective September 4, 2012, in the event Complainant has not retired by the close of business, September 4, 2012.

e. Expunge Complainant's Official Personnel Folder of all records of disciplinary action taken pursuant to Paragraph 3.b. above if as of the date of his retirement or resignation, which will be no later than September 4, 2012, Complainant has not engaged in any further acts of misconduct, in accordance with Paragraph 2.d. above. Pursuant to this subparagraph, the Agency agrees to provide any prospective employer with a reference consisting of the dates of Complainant's employment with the Agency; the title, grade, series, and salary of the position held by Complainant at the time of his retirement or resignation; and that Complainant retired or resigned voluntarily from his position with the Agency. However, failure to comply with this subparagraph due to ignorance of the Agreement and its terms by any Agency employee does not give rise to a claim of breach of contract by Complainant.

4. **NON-ADMISSION.** This Agreement does not constitute an admission by the Agency of any wrongdoing on its part, and the Agency expressly denies that it, its officers, agents, employees, or

representatives, violated any law, regulation, contract, or employment practice with regard to the treatment of Complainant, or that it discriminated, harassed and/or retaliated against Complainant in any way. Similarly, this Agreement does not mean that Complainant's allegations are without merit. Rather, the Agreement reflects the parties' interest in reaching an agreement to the satisfaction of both parties.

5. **NOT PRECEDENTIAL.** The parties agree that this Agreement has no precedential effect. Neither the Agreement, nor any term(s) herein may be used as a basis, by any person(s), to justify similar terms in any subsequent matter. This Agreement shall not be used, cited, or relied upon by any party in connection with any other judicial or administrative procedure.

6. **NON-DISCLOSURE.** The parties agree to keep the nature and terms of this Agreement confidential. The terms of the Agreement may not be disclosed to any person or entity beyond the persons signing below, except to Complainant's spouse as applicable, as required by law, as necessary to implement the terms of the Agreement, or as ordered by a court or administrative body of competent jurisdiction.

7. **BREACH OF AGREEMENT.** If either party believes that the other party has failed to comply with the terms of the Agreement, the party shall notify Roy Castro, EEO Officer, U.S. Department of Commerce, or Suzan J. Aramaki, Director, Office of Civil Rights, U.S. Department of Commerce, in writing, of the alleged noncompliance within thirty (30) days of when the party knew or should have known of the alleged noncompliance. Pursuant to 29 C.F.R. § 1614.504(c), allegations that subsequent acts of harassment,

discrimination and/or retaliation violate this Agreement shall be processed as separate complaints.

In accordance with 29 C.F.R. § 1614.504(a), in the event of failure by the Agency to carry out the terms of this Agreement for any reason other than for noncompliance or waiver of this Agreement by Complainant, Complainant may request:

a. Implementation of the terms of the Agreement; or

b. Reinstatement of the formal complaint(s) for further processing.

8. EFFECT OF SIGNATURE. By signing this Agreement, Complainant agrees that Complainant has read and understands the entire Agreement, the effect(s) of each provision, especially the provisions relating to the withdrawal of the formal complaint(s), thereby foreclosing further litigation on the matters raised in the formal complaint(s), and the waiver set forth in Paragraph 2, above, and that Complainant has signed this Agreement voluntarily and was in no way coerced. Complainant shall have twenty-one (21) days from the date of receipt of this Agreement to consider its terms. Should Complainant sign this Agreement before the twenty-one (21) day time period has expired, Complainant attests that Complainant's decision to accept such a shortening of this period is knowing and voluntary, and was not induced by the Agency through fraud, misrepresentation, and/or threat to withdraw or alter the terms of the Agreement.

9. TOTALITY OF AGREEMENT. This Agreement constitutes a fair, full, and final resolution of all aspects of Complainant's allegations, and contains all terms and conditions of the Agreement

between the parties. No other conditions or assurances, expressed or implied, are included.

10. JOINT PRODUCT. This Agreement is a joint product and will not be construed against any party on the grounds of sole authorship.

11. EFFECTIVE DATE. This Agreement becomes effective when fully executed by the signatories designated below to include all concurrences.

/s/ Anthony W. Perry *08/16/2011*
ANTHONY W. PERRY Date
Complainant

/s/ Brian E. McGrath *08/16/2011*
BRIAN E. MCGRATH Date
Management Official

/s/ Johnny T. Zuagar *08/16/2011*
JOHNNY T. ZUAGAR Date
Complainant's Representative

/s/Ronda J. Brown *08/22/2011*
RONDA J. BROWN Date
Management's Representative

CONCURRENCES:

/s/ Roy Castro *08/22/2011*
ROY CASTRO Date
Equal Employment Opportunity Officer

/s/ Ted A. Johnson *08/11/2011*
TED A. JOHNSON Date
Acting Chief, Human Resources Division

/s/ Brian D. DiGiacomo *08/22/2011*
BRIAN D. DiGIACOMO Date
Chief, Employment and Labor Law Division

Typed Version
Anthony W Perry

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001

August 26, 2011

MEMORANDUM FOR Anthony W. Perry
Information Technology Specialist
Business Planning Staff
Lan Technology Support Office

From: Terryne F. Murph
Chief, Information Systems Support and Review Office

Subject: Proposed Removal Decision

By letter dated June 7, 2011, Daren J. Gutschow, Assistant Division Chief, Telecommunications Office, U.S. Census Bureau, informed you that he proposed to remove you from your position as an Information Technology (IT) Specialist, GS-2210-14/08, with the Business Planning Staff, Lan Technology Support Office, and from the Federal service, no earlier than 30 calendar days after your receipt of the proposal notice, for inappropriate conduct.

In the proposal notice dated June 7, 2011, you were informed of your right to reply to the proposal notice orally, in writing, or both. You requested an extension to the reply period, which was granted until close of business July 1, 2011. On June 15, 2011, you stopped by my office for an impromptu meeting. On June 16, 2011, a formal meeting was held with you and your former designated representative, Franklin D. Silberstein, during which you provided an oral response. On June 30, 2011, I received a written reply from you and your newly designated representative, Johnny T. Zuagar.

After full consideration of the information available to me, including your oral and written responses, I find that the reason for the proposed removal is fully supported by the evidence. However, I have determined that a lesser penalty will deter such misconduct in the future and should be imposed. Accordingly, I have decided to suspend you for a period of thirty (30) calendar days from your position and the Federal service.

Specifically, you will serve your suspension intermittently to lessen the burden that this suspension would have on you financially. Your suspension will be served:

- effective Saturday, August 27, 2011, not to exceed Sunday, September 4, 2011, and you will return to you regular duty status on Monday, September 5, 2011.
- effective Saturday, September 10, 2011, not to exceed Sunday, September 18, 2011, and you will return to you regular duty status on Monday, September 19, 2011.

Fax
Attach 0 1 2 P1

Appeal Number 2011-20
Anthony W Barry

- effective Saturday, September 24, 2011, not to exceed Wednesday, October 5, 2011, and you will return to you regular duty status on Thursday, October 6, 2011.

This action is being taken pursuant to Title 5, Code of Federal Regulations, Part 752, to promote the efficiency of the service.

If you have any questions about the contents of this decision notice, or your rights in connection with it, you may contact S[illegible]y J. Chalmers, Chief, Employee Relations Branch on (301) 763-1463.

Tab Attach 01-P2

APPLICATION FOR VOLUNTARY EARLY RETIREMENT AND/OR VOLUNTARY SEPARATION INCENTIVE PROGRAM

PRINCIPAL PURPOSE: This form serves as a Census Bureau employee application for Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Pay (VSIP). This application specifies how the employees would separate and explains the procedures for approving VERA and VSIP.

1. NAME (Last, First, Middle Initial)	2. SSN
Perry Anthony W.	[redacted]
3. ORGANIZATION	**4. OFFICE TELEPHONE NUMBER**
Information System Support and Review Office ISSRO	(301) 763-5058
5. JOB TITLE	**6. SERIES** / **7. GRADE**
Information Technology Specialist	2210 / GS-14/8

8. As part of the Census Bureau Voluntary Early Retirement Authority (VERA) and/or Voluntary Separation Incentive Payment (VSIP) programs, I am applying for separation under the following condition(s) (mark applicable conditions):

☒ VOLUNTARY EARLY RETIREMENT OR ☐ OPTIONAL RETIREMENT AND ☒ VSIP

9. When/if my VSIP application is approved, I shall be committed to a voluntary early or optional retirement and shall be entitled to receive a cash incentive equal to the lesser of: (1)$25,000, or (2) the amount that I would receive under the formula for computing severance pay. I understand that once approved, I may not withdraw my application on or after the effective date of my retirement.

I understand that by accepting the VSIP, I may not be reemployed anywhere within the Federal Government, including employment in non-appropriated fund instrumentalities or with an agency of the United States through a personal services contract or other direct contract for 5 years after my separation unless I repay the full amount of my separation incentive pay (before taxes and deductions).

I understand that by accepting early or optional retirement I am not subject to any restrictions regarding my annuity and I can accept non-Federal employment; except if I'm an employee covered under FERS that qualifies for the annuity supplement, I could have the supplement reduced or discontinued due to an earnings limitation. If an annuitant (i.e., a retired Federal employee) is hired under a Federal appointment, the annuity will continue and the new Federal salary will be offset by the annuity amount, unless the employing agency seeks and is granted a waiver of the salary offset by the U.S. Office of Personnel Management.

Statement of Understanding
By signing this document you are acknowledging you have read and understand the terms and conditions of this application.

a. EMPLOYEE SIGNATURE	b. DATE
Anthony W Perry	3/29/2012

HUMAN RESOURCES OFFICE USE ONLY

10. Approved by: Human Resources Specialist	Date Application Approved	Date Applicant Notified of Approval
	4/02/2012	4/02/2012

EXHIBIT 46

I Virginia 8:41 am 4/03/2012

Please type or print legibly. OMB No. 3124-0009

1. Name (last, first, middle initial)

Perry, Anthony, W.

2. Present Address (number and street, city, state, and zip code)

Address: [redacted]

City, State, Zip Code: [redacted]

3. Telephone numbers (include area code) and E-Mail Address

You must notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.

Home: [redacted] Work:

Fax: Other: [redacted]

E-mail Address: [redacted] Other Phone Type: Business

4. Do you wish to designate an individual or organization to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.)

☐ Yes ☑ No

5. Name and address of the agency that made the decisions or took the action you are appealing (include bureau or division, street

Agency Name: Department of Commerce

Bureau: Bureau of the Census

Address: 4600 Silver Hill Road

City, State, Zip code: Washington, District of Columbia, 20233, United States of America

6. Your Federal employment status at the time of the decision or action you are appealing:

☐ Temporary ☑ Permanent ☐ Applicant

☐ Term ☐ Retired ☐ Seasonal

☐ None

7. Type of appointment (if applicable):

☑ Competitive ☐ SES ☐ Excepted

☐ Postal Service ☐ Other

8. Your occupational series, position title, grade, and duty station at the time of the decision or action you are appealing (if applicable):

Occupational Series: 2210 Position Title: Supervisory Information

Grade: GS-14 step 8 Duty Station: Suitland, MD

9. Are you entitled to veteran's preference? See 5 U.S.C. 2108.

☐ Yes ☑ No

10. Length of Government Service (if applicable):

28 Years 9 Months

11. Were you serving a probationary or trial period at the time of the decision or action you are appealing?

☐ Yes ☑ No

Appeal Number: 201201588

Submission Date: 4/25/2012 2:53:16 PM

Confirmation Number: 34193

Please type or print legibly.

HEARING: You may have a right to a hearing before an administrative judge. If you choose to have a hearing, the Board will notify you when and where it is to be held. If you do not want a hearing, the Board will make its decision on the basis of the submission of the parties.

12. Do you want a hearing? ☑ Yes ☐ No

E-Filing: Registration as an E-Filer enables you to file any or all of your pleadings with the Board in electronic form. Registration also means you consent to accept service of all pleadings filed by other registered E-Filers and all documents issued by the Board in electronic form. You will receive these as PDF documents at the e-mail address you provided the Board. If registered as an E-Filer, you may file any pleading, or portion of a pleading, by non-electronic means. You can withdraw your registration as an e-filer at any time.

13. Do you wish to register as an E-Filer in this appeal?

☑ I elect to E-File ☐ I decline to E-File

14. **I certify that all of the statements made in this form and all attached forms are true, complete, and correct to the best of my knowledge and belief.**

Anthony W. Perry, Appellant Date:

[redacted]

[redacted]

Please type or print legibly.

OMB No. 3124-0009

[redacted]

Name *(last, first, middle initial)* Perry, Anthony, W.

1. Check the box that best describes the personnel action or decision taken by the agency you named in MSPB Form 185-1 that you are appealing. (If you are appealing more than one action or decision, check each box applies.) Attach a copy of the decision letter (if any). If an SF-50 or its equivalent was issued and is available, attach it now; however, DO NOT delay filing your appeal because you do not have an SF-50. You may submit the SF-50 when it becomes available.

Termination of Employment (You may select only one of the following four personnel actions.)

- ☐ Removal (Termination after probationary or initial service period)
- ☐ Termination during probationary or initial service period
- ☐ Involuntary Resignation
- ☑ Involuntary Retirement

- ☐ Reduction in grade or pay
- ☑ Suspension for more than 14 days
- ☐ Separation, demotion, or furlough for more than 30 days by reduction in force (RIF)
- ☐ Furlough of 30 days or less
- ☐ Denial of within-grade increase
- ☐ Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement
- ☐ Negative suitability determination
- ☑ Other action Describe other action Supervisory status stripped; barred from

2. Date you received the agency's proposal letter (if any) (month, day, year)	3. Date you received the agency's final decision letter (if any) (month, day, year) (Attach a copy)	4. Effective date (if any) of the agency action or decision (month, day, year)
06/07/2011	08/22/2011	04/03/2012

5. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?

☐ Yes ☑ No

6. Explain briefly why you think the agency was wrong in taking this action or making this decision.

See Continuation Sheet for Response.

7. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

See Continuation Sheet for Response

Appeal Number: 201201588
Submission Date: 4/25/2012 2:53:16 PM
Confirmation Number: 34193

Please type or print legibly.

8. With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

☐ Yes ☑ No

9. If your answer to question 8 is "Yes," on what date was the grievance filed (month, day, year)?

NOT APPLICABLE

10. If your answer to question 8 was "Yes," has a decision on the grievance been issued?

NOT APPLICABLE

11. Select all the additional claims you would like to file with this appeal.

☐ No Additional Claims

☑ File a claim for harmful procedural error

☐ File a claim for not in accordance with law

☑ File a claim of prohibited discrimination

☑ File a claim of prohibited personnel practices

☐ File a Whistleblower claim

☐ Request a whistleblower stay

☐ File a USERRA claim

☐ File a veteran's preference claim

[redacted]

Continuation Sheet

6. Explain briefly why you think the agency was wrong in taking this action or making this decision.

1. I notified the Management Official in 2009 of my complaints of past discrimination, prior pending complaints (EEOC Case No. 531-2010-00351X (Agency Complaint Nos. 09-63-01027, 10-63-00197 & 11-63-00080; EEOC Docket No. 01201117784 (Agency Complaint Nos. 07-63-00080 & 07-63-00145; and EEOC Docket No 0120111034 (Agency Complaint No 10-63-02671)), and my desire to compete for promotional opportunities and move forward.
2. On May 19, 2011, I submitted "Opposition To Agency Summary Judgment to Dismiss" my claims of discrimination and prohibited personnel actions.
3. On June 6, 2011 I sent an email to the Census Bureau Director expressing my discontent about the continued discrimination against me and denial of opportunities given to younger Caucasian employees.
4. On June 7, 2011, I received a Proposed Removal from Darren J. Gutschow who was not my supervisor.
5. The Proposed Removal did not account for 30 minutes of legal break-time.
6. The Proposed Removal included overextended time taken during the lunch break when the practice condoned at the Census Bureau is one-hour for lunch breaks. My supervisor approved of a one-hour lunch break for all Branch employees.
7. The Proposed Removal did not consider my disability and the informal accommodations that had been provided by my supervisor since 2007. I was told by Dale Reed to "do what you have to do" to relieve and manage my pain from sitting to long or standing to long.
8. The Proposed Removal did not consider that I was allowed by my supervisor and Division Chief to work or make up time during the evening in the office, at home in the evening, and on my day off as needed without pay. There are at least two sets of emails regarding assignments I was working on to my supervisor, Division Chief and the management official after normal working hours.
9. Smokers are given unlimited time away from their desks for smoke breaks.
10. Employees using the fitness center are not tracked for the time away from their desks.
11. I attended all the meetings I was physically and emotionally able to attend.
12. My supervisor was always informed and aware of when I was going to be out of the office and the reason. There is no record of AWOL. Leave not recorded was unintentional.
13. My supervisor and my Division Chief approved and certified all of my Time and Attendance records.
14. The Proposed Removal indicated that the Deciding Official would provide me with a written decision. The Proposed Removal did not include an EEOC Settlement Agreement.
15. Over 300 hours of sick leave were used from 2009 through 2011 getting care for my disability and the remaining 50 or so hours for my daughter's healthcare needs with no impact on performance as I worked off the clock and my supervisors knew.
16. On February 27, 2012, I underwent a Total Left Hip Replacement of the disabled joint from which I had been suffering for years and more extensively over the last three years.
17. My first line supervisor, Dale Richard Reed and Division Chief, Patricia Musselman had both been named prior Responsible Management Officials.
18. A formal Reasonable Accommodations request was made June 13, 2011 (before the personnel actions and decisions being appealed were made.
19. A Reasonable Accommodations for my disability was granted on November 9, 2011.
20. The agency discriminated against me on the basis of race, age, and my disability and subjected me to retaliation and reprisal for prior EEOC activity. I was coerced to sign the EEOC Settlement Agreement forcing me to involuntary retire on September 4, 2012 (04/03/2012 because of continued surveillance and the agency statement it could terminate me at its discretion) and a 30-day suspension without a hearing on the basis of retaliation, prior EEO, and discrimination and in violation of the Douglass Factors and without just cause and due process.
21. I withdrew the Office of Special Counsel File # MA-11-2619 on Sept. 8.

[redacted]

Continuation Sheet

7. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

1. Reinstatement, reimbursement for 30-day suspension, back-pay, front-pay, benefits, all other allowable damages and relief. Agency officials punished who orchestrated this adverse action.
2. MSPB or EEOC hearing on the agency's intentional discrimination, prohibited personnel actions and retaliation charges. I am requesting all allowable damages to include actual and non-pecuniary compensatory, attorney fees and other equitable relief, retroactive promotion to GS-15, back-pay, front-pay, training that has been denied.

[redacted]

[redacted]

Please type or print legibly

OMB No. 3124-0009

Name *(last, first, middle initial)* Perry, Anthony, W.

Harmful Procedural Error -

Harmful error is defined in the Board's regulations as: "Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error." See 5 C.F.R.

1. If you believe that the agency made a error(or error) in applying required procedures in connection with the action or decision you

See Continuation Sheet for Response.

2. Explain how the error you in response to question 1 above caused the agency to reach a conclusion different from the one it would have

See Continuation Sheet for Response.

Not in Accordance with Law -

An appealable action will be reversed as being "not in accordance with the law" if the agency's action is unlawful in its entirety, i.e., if there is no legal authority for action.

3. If you believe that the agency action or decision you are appealing, was "not in accordance with law," please explain

NOT APPLICABLE

4. If you believe a specific law was violated, please identify the law and describe how the law you identified was violated.

NOT APPLICABLE

[redacted]

Continuation Sheet

1. If you believe that the agency made a error(or error) in applying required procedures in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3, identify the procedure(s) and describe the error(s).

The proposal letter is authored by an employee that is not my supervisor nor in my chain of command. It states that I would receive a written decision from the Deciding Official. Before the Deciding Official issued her decision, the Agency Management Official, Human Resources Official, and Management Representative produced an EEOC Settlement Agreement and forced me to sign it to avoid termination which included suspension, forced retirement, removal from supervisory position, barred from future Commerce Employment and removal at Agency discretion. Douglass Factors and disability not considered if misconduct is concuded. My time and attendance were approved and certified by supervisor and division chief. The motive of the charges brought in the Proposal was punitive. The Deciding Official released her decision four days later deciding not to terminate but suspend for 30 days without a hearing.

[redacted]

Continuation Sheet

2. Explain how the error you in response to question 1 above caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error.

There was no misconduct on my part in any of my behavior and therefore no charge should have been filed. Informal accomodations had been made by my supervisor since 2007-2008 not accounted for in the proposal. The agency did not consider or give adequate consideration to the factual evidence provided. The Deciding Official decided on a 30-day suspension only. The Agency's motive was to get my pending EEOC action claiming race and age discrimination off of the table without settleing fairly and remove me for past EEO claims.

Please type or print legibly.

OMB NO. 3124-0009

Name *(last, first, middle initial)* Perry, Anthony, W.

Discrimination - An allegation of discrimination is not an independent source of Board jurisdiction. The underlying action must first be within the Board's jurisdiction before an allegation of discrimination may be considered by the Board. See 5 CFR 1201.151.

1. Check the appropriate box (or boxes) below to indicate the basis (or bases) of your claim that you are discriminated against by the agency in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3.

☐ Discrimination based on marital status or political affiliation	☑ Race	☐ Color	☐ Religion
☐ Sex(Title VII of the Civil Rights Act of 1964)	☐ National Origin	☑ Disability	☑ Age
☐ Sex(sexual harassment under Title VII of the Civil rights Act of 1964)			

2. If you believe you were discriminated against by the agency, in connection with the matter appealed, because of your race, color, religion, sex, national origin, disability, or age, explain why you believe it to be true.

See Continuation Sheet for Response.

3. Have you filed a formal discrimination complaint with your agency concerning the action you are appealing?

☐ Yes ☑ No

4. If your answer to question 3 is "Yes", enter the place where the complaint was filed if different from your answer to question 5 on MSPB Form 185-1:

NOT APPLICABLE

5. Date filed (month, day, year):

NOT APPLICABLE

6. Has a decision been issued?

NOT APPLICABLE

REQUEST FOR COMPENSATORY DAMAGES

7. Are you requesting an award of compensatory damages in connection with your discrimination claim? See 5 CFR 1201.202(c).

☑ Yes ☐ No

[redacted]

Continuation Sheet

2. If you believe you were discriminated against by the agency, in connection with the matter appealed, because of your race, color, religion, sex, national origin, disability, or age, explain why you believe it to be true.

The charging document failed to reasonably account for my disability and the near total reason for the behavior the agency is charging. Prior accommodations had been made by my supervisor. I was retaliated against for my past EEO actions claiming race and age discrimination. This matter is retaliation and was orchestrated by the management official and the human resources official. I was applying/requesting to be promoted and complained that younger Caucasians with less skill, credentials and record of past performance were being promoted above me. To keep from promoting me or addressing prior and ongoing discrimination the agency coerced me to sign the EEOC Settlement or be terminated.

[redacted]

Please type or print legibly. OMB No. 3124-0009

Name *(last, first, middle initial)* Perry, Anthony, W.

Prohibited Personnel Practices - The statutory prohibited personnel practices are set forth at 5 U.S.C. 2302(b)(1)-(b)(12). An allegation of a prohibited personnel practice is not an independent source of Board jurisdiction. The underlying action must first be within the Board's jurisdiction before an allegation of a prohibited personnel practice may be considered by the Board. See 5 CFR 1201.56(b)(2).

Section 2302 of title 5, U.S. Code, does not apply to all personnel actions or to all Federal employees. Please review the definitions of "personnel action," "covered position," and "agency" at 5 U.S.C. 2302(a) to be sure that both you and the action or decision you are appealing are covered by those definitions before you complete and submit this form.

1 Check the appropriate box (or boxes) below to indicate the basis (or bases) of your claim that the agency committed a prohibited personnel practice in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3.

- ☐ Discrimination based on political affiliation
- ☐ Coercing the political activity of any person
- ☐ Discrimination based on marital status
- ☐ Nepotism (favoring relatives)
- ☐ Soliciting or considering employment recommendations not based on the individual's work performance, ability, aptitude, general qualifications, suitability, character, or loyalty
- ☑ Taking or failing to take a personnel action as a reprisal for the exercise of any appeal, complaint or grievance right; for assisting anyone else in exercising such a right; for cooperating with or disclosing information to the Special Counsel or the Inspector General of an agency; or for refusing to violate a law
- ☑ Deceiving or willfully obstructing a person's right to compete for employment
- ☐ Influencing any person to withdraw from competition for any position, whether to help or hurt anyone else's employment prospects
- ☑ Giving unauthorized preferential treatment to any employee or applicant
- ☑ Discriminating on the basis of personal conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except in case of criminal conviction for the conduct
- ☐ Taking or failing to take any other personnel action that would violate any law, rule, or regulation implementing or directly concerning the merit system principles

e-Appeal Attachment Transmittal

Appeal Number: 201201588
Appellant Name: Mr. Anthony W. Perry
Agency Name: Department of Commerce

Please check the box for each document included with this transmittal.

	Name of Attachment	Attachment Processing Status	File Name/Delivery Method
☐	Agency Decision Letter	Upload with e-Appeal	coercedsign0001.pdf
☐	SF-50, Notification of Personnel Action	Document not available or not applicable	N/A

2 copies must be submitted of all documents submitted in hardcopy.
Send documents to be submitted in paper form to:
Washington DC Regional Office
1800 Diagonal Road Suite 205
Alexandria, Virginia 22314-2840
United States of America

Phone: (703) 756-6250
Fax: (703) 756-7112